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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. [redacted]35

LLOYD BARENBLATT,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND MOTION FOR LEAVE TO USE ORIGINAL RECORD

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To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above entitled case on January 16, 1958.

Motion for Leave to Use Original Record

The petitioner respectfully moves the Court for permission to use the original record filed in this Court in connection with the prior petition herein, No. 742, October Term, 1956, and presently on file in the Office of the Clerk. There is also filed in connection with this petition the record of the supplemental proceedings in the court below upon the

former remand of this case to the court below. 354 U. S. 930.

Opinions Below

The oral opinion of the District Court is unreported and is printed in Appendix B, *infra*, page 60. The opinion and order of the Court of Appeals entered on January 16, 1958, upon remand by this Court, 354 U. S. 930, is not yet officially reported and is printed in Appendix B, *infra*, page 19. The original opinion and order of the Court of Appeals dated January 3, 1957, from which petitioner petitioned for a writ of certiorari is reported in 240 F. 2d 875 and is printed in Appendix B, *infra*, page 39.

Jurisdiction

The opinion and judgment of the United States Court of Appeals was entered January 16, 1958. The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1) and Rule 37(b)(2) of the Federal Rules of Criminal Procedure.

Questions Presented

1. Whether or not Congress, in the statute and resolution establishing the House Committee on Un-American Activities, authorized the Committee to make inquiry of petitioner in the field of education.

2. Whether the Committee received from Congress any definite assignment or sufficient authority to make an investigation in the field of education or otherwise.

3. Whether the statute and resolution establishing the Committee are unconstitutional on their face and as applied to petitioner in that they invade petitioner's constitutional

rights under the First Amendment in respect of his freedom of speech, political and academic association and communication; under the Fifth Amendment in that they provide a constitutionally vague and incomplete standard for inquiry and prosecution; under the Sixth Amendment in that they fail to inform him of the nature and cause of the accusation made against him; and under the Ninth and Tenth Amendments in that they invade rights and powers retained by the people and reserved to the people.

4. Whether the legislative inquiry and the resulting conviction were unconstitutional and unlawful because of an unlawful purpose to expose petitioner.

5. Whether the legislative inquiry and the resulting conviction were unconstitutional and unlawful because of the Committee's failure to apprise petitioner of the subject matter of the investigation and the pertinency of the inquiry to the investigation.

Constitutional and Statutory Provisions Involved

These are printed in the appendix, *infra*, page 16.

Statement

Petitioner, Lloyd Barenblatt, was convicted in the District Court for the District of Columbia under an indictment charging violation of 2 U. S. C. Section 192 for refusing to answer questions before a subcommittee of the House Committee on Un-American Activities. The indictment charged in substance that petitioner "unlawfully refused to answer" the following questions "pertinent to the question then under inquiry" before a subcommittee of the House Committee on Un-American Activities:

Count One: Are you now a member of the Communist Party?

Count Two: Have you ever been a member of the Communist Party?

Count Three: Now, you have said that you knew Francis Crowley. Did you know Francis Crowley as a member of the Communist Party?

Count Four: Were you ever a member of the Haldane Club of the Communist Party while at the University of Michigan?

Count Five: Were you a member while a student of the University of Michigan Council of Arts, Sciences, and Professions?

For a four year period immediately prior to his appearance before the Un-American Committee, petitioner had been employed as an instructor in psychology at Vassar College. After he received the subpoena to appear before the Committee his contract with Vassar College expired and was not renewed. Prior to his association with Vassar College for the period 1947-1950, he had been at the University of Michigan in the Graduate School of Studies, studying for his doctorate in social psychology (Gov't Ex. 8, p. 5802).[1] During most of the period of his stay at the University he was a teaching fellow in psychology (Gov't Ex. 8, p. 5813).

Pursuant to subpoena, petitioner appeared and testified on June 28, 1954 in Washington, D. C. before a subcommittee of the House Committee on Un-American Activities. Four other witnesses had preceded him. He was the last witness on that day. Subsequently, in its official 1954 An-

[1] Government Exhibit 8 is the printed transcript of the hearings at which petitioner appeared.

nual Report to the House of Representatives, the Committee stated, with regard to the witnesses who testified that day:

> "The 1954 hearings were set up by the committee in order to demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success" (Gov't Ex. 10, p. 15).

The first witness who testified that day was Francis X. T. Crowley. Immediately before Mr. Crowley testified and after the composition of the committee was announced, the Chairman of the Committee asked the Committee counsel to explain the purposes "for this hearing this morning" (Gov't Ex. 8, p. 5753). In answer the Committee counsel stated:

> "The field covered will be in the main communism in education and the experiences and background in the party of Francis X. Crowley. It will deal with activities in Michigan, Boston, and in some small degree, New York" (Gov't Ex. 8, p. 5754).

Crowley then testified, among other things, that he knew appellant when he was a graduate student at the University of Michigan. He further testified:

> "Mr. Kunzig: And you knew him to be a member of the Haldane Club in the Communist Party?
>
> Mr. Crowley: Yes, just the Haldane Club.
>
> Mr. Kunzig: The Haldane Club of the Communist Party, I should say.
>
> Mr. Crowley: Yes, and to my knowledge he left that and he left the University of Michigan.
>
> Mr. Kunzig: Do you know where he teaches at the present time, if he teaches?

Mr. Crowley: Yes, he is at Vassar. I would like to say, in fairness to him—

Mr. Kunzig: Any testimony you can give, we would be glad to have.

Mr. Crowley: Yes, that he expressed to me his opinion that he was pretty much of the same opinion that I was about membership in the party. I am convinced that he has left it, the Communist Party.

Mr. Kunzig: Your close knowledge of him was up to about 1950?

Mr. Crowley: Yes, I have seen him a few times since then, occasional visits" (Gov't Ex. 8, p. 5778).

In respect to the Haldane Club, Mr. Crowley testified that it was a group for graduate students and teaching fellows (Gov't Ex. 8, p. 5773). In answer to the question as to what sort of activities the Haldane group engaged in, he said:

"They were chiefly of an intellectual nature discussing things. It was mainly a discussion group. There were very little of the activity of the kind that Neafus engaged in, that is, running around the campus with petitions or things like that" (Gov't Ex. 8, p. 5774).

He also stated the following in respect to the Haldane Club:

"Mr. Velde: Did you study Marxism?

Mr. Crowley: Yes, pamphlets on Marxism. I forget which ones, but the discussion centered around, as I recall, literature and cultures, on the subjects of arts, the relation to communism of Marxism, what is the function of the artist in that respect.

The Haldane Club was chiefly an intellectual group, discussion group.

* * * * *

Mr. Velde: Do you feel that your colleagues had that idea, that they were engaged in a conspiracy?

Mr. Crowley: I am sure that the ones I knew did not have that notion. They were people who were mostly the intellectual type of people who were getting their feet wet on something or other. Some of them may have had that in their mind, but I never heard it expressed in terms of overthrowing anything. It was never expressed to me that way" (Gov't Ex. 8, pp. 5781-5782).

Petitioner was actually called to testify shortly before 4 o'clock and was the last witness that day. The subcommittee made no statement advising the petitioner of the purpose of the particular inquiry (Gov't Ex. 8, p. 5813).

Petitioner, in response to the questions upon which the indictment rests attempted to present orally a written statement of objections that he had prepared. These objections constituted his reasons for refusing to answer. They set forth the limitations upon the Congressional power of investigation and included the following excerpt from *Jones* v. *Securities Exchange Commission*, 298 U. S. 1:

"• • • The citizen when interrogated about his private affairs has a right before answering to know why the inquiry is made; and if the purpose disclosed is not a legitimate one, he may not be compelled to answer" (Gov't Ex. 8, pp. 5807-5808).

The subcommittee refused to hear these objections and indicated that it was only concerned with whether he was asserting his privilege against self-incrimination.

Proceedings Below

Petitioner's motion to dismiss the indictment for insufficiency was denied. The trial came before District Judge

Alexander Holtzoff on March 14, 1956 in the United States District Court for the District of Columbia. After some evidence had been presented to the jury, petitioner waived trial by jury (Tr. 146).* After trial defendant was adjudged guilty (Tr. 192) and sentenced to imprisonment for a period of six months and fined $250 (Tr. 199). During the course of the closing arguments, the court commented, "There is no contention he was disrespectful or contumacious except in a legal sense. There is no doubt about that" (Tr. 174).

A panel of the Court of Appeals upheld the conviction in an opinion and order dated January 3, 1957. It held that the law establishing the House Committee on Un-American Activities was constitutional and that "Courts must presume congressional investigations to have valid legislative purposes" (*infra*, p. 48). The court held that even if the sub-committee had also had the purpose in summoning Petitioner of "demonstrating" his "identity to the people of Michigan," that did not invalidate the questioning. It held that this Committee had power to inquire into the operations of a non-conspiratorial Marxist study group composed of graduate students at a university as a matter which the Committee can and did regard as having value in the exercise of its duty.

The court upheld the validity of the indictment. It upheld the subcommittee failure to consider and rule on Petitioner's written objections on the ground that he had been directed to answer and could have presented them orally.

A petition for certiorari was duly filed in the Supreme Court and on June 24, 1957, the following *per curiam* order was entered:

---

* Petitioner was granted leave to appeal to the Court of Appeals on the typewritten transcript. References preceded by "Tr." are to pages of the typewritten transcript.

"The petition for writ of certiorari in this case is granted. The judgment of the Court of Appeals for the District of Columbia Circuit is vacated and the case is remanded for consideration in the light of *Watkins* v. *United States*, 354 U. S. 178; 354 U. S. 930 (1957).

Upon remand the Court of Appeals, *en banc*, by a 5-4 court division entered its opinion and order January 16, 1958, sustaining the conviction. It held that while this Court in no uncertain terms criticized the resolution creating the Committee for lack of specificity, for uncertainty, for vagueness, and the scope of the construction accorded to the resolution as acted upon by the members of the Committee and its Subcommittees, that this Court had not in *Watkins* intended to strike down the resolution. The Court of Appeals further held that this Court in *Watkins* was of the opinion that the vagueness of the resolution made it necessary that the witness be apprised of the particular matter under inquiry by the Committee and, on objection, upon the pertinency of the questions involved in the inquiry. The Court of Appeals concluded that Petitioner was made fully aware of the subject under inquiry, was in a position to judge the pertinency of the questions relating to that subject and that the questions were in fact relevant and pertinent to that subject. The Court of Appeals held that the holding of this Court in *Sweezy* did not compel it to rule that any of appellant's constitutional rights were violated.

Chief Judge Edgerton in a dissenting opinion joined by Judge Bazelon stated: "I understand *Watkins* to hold that the Committee on Un-American Activities had no authority to compel testimony because it had no definite assignment from Congress" and that "even if, contrary to my clear understanding of *Watkins*, Congress did 'with sufficient

particularity" authorize the Committee to investigate something, it by no means follows that Congress authorized the Committee to investigate Communists in the field of education." Judge Fahy in a dissenting opinion joined by Judge Washington stated: "Reading *Sweezy* in the light of *Rumely* and *Watkins*, I think the Committee could not proceed to investigate the field of education—at least with the use of compulsory process, under the sanction of contempt—without a more specific authorization than it had been given, and that therefore the conviction must be reversed. * * * "

REASONS FOR GRANTING THE WRIT

I.

Congress did not authorize the Committee's inquiry of petitioner in the field of education.

The Court of Appeals, nine Circuit Judges sitting *en banc*, divided five judges to four judges on the meaning of this Court's decision in *Watkins* v. *United States*, 354 U. S. 178 read together with *Sweezy* v. *New Hampshire*, 354 U. S. 234, decided together on June 17, 1957. The majority of five judges held that this Court in *Watkins*, did not hold the enabling resolution insufficient to make the inquiry which was made of the petitioner provided that the Committee sufficiently advised the petitioner of the nature of the inquiry so that he could determine the pertinency of the questions. The minority of the judges in two dissenting opinions ruled that *Watkins*, read with *Sweezy*, require a ruling that the Committee had not been authorized to make its investigation in the field of education. Two of the judges (Edgerton and Bazelon, *JJ.*) went further and stated that *Watkins* held that "the Committee on Un-American Activi-

ties had no authority to compel testimony because it had no definite assignment from Congress" (App. 34).

This petition should be granted because the decision below conflicts with the decisions of this Court in *Watkins* and *Sweezy* and authoritative judicial clarification is urgently needed for the administration of justice in the lower courts and as some standard of conduct for further activities of committees of Congress and to avoid the multiplicity of litigation which otherwise will result.[1]

II.

Congress did not authorize the Committee to make any inquiry.

The majority of the court below recognized that this Court in *Watkins* "in no uncertain terms criticized the resolution creating the Committee for lack of specificity, for uncertainty, for vagueness, and the scope of the construction accorded to the resolution as acted upon by the members of the Committee and its Subcommittees" (App. 21). The majority concluded, however, that this Court in *Watkins* "was of the opinion that the vagueness of the resolution made it necessary, and only fair, that the witness be apprised of the particular matter under inquiry" (App. 24) and that in effect the vagueness in the statutory grant of authority could be cured by statements of a committee seeking to exercise the authority. Judges Edgerton and Bazelon, as stated *supra*, dissented on the ground that *Watkins* held that the Committee had no authority to compel testimony because it had no definite assignment from Congress and ruled that the majority view actually overruled the same court's decision in *Singer* v. *United States*, 247 F. 2d 535 (C. A. D. C.). Judges Fahey and Washington

[1] Counsel is informed that in some of 9 similar cases pending in the Court below, applications are being made to postpone briefs and arguments until disposition of the instant case.

ruled that it was unnecessary to go into the question "whether *Watkins* holds the Committee to be without authority to compel testimony on any subject of inquiry" (App. 38).

The decision below conflicts with *Watkins* and a judicial determination of the Committee's authority is urgently needed to govern inquiries by the Committee and the administration of justice in criminal proceedings arising out of activities of the Committee.

III.

The statute and resolution authorizing the Committee are unconstitutional.

The statute and resolution, as construed by the majority of the court below to authorize the inquiry and as applied by the Committee to make the inquiry of petitioner resulting in his conviction, constitute an unconstitutional invasion of his freedom of speech, political and academic association and communication in violation of the First Amendment. *Sweezy* v. *New Hampshire, supra.* The petitioner adopts and urges upon this Court without repeating them here, the contentions set forth in the dissenting opinion of Circuit Judge Edgerton in *Barsky* v. *United States,* 167 F. 2d 241, cert. den. 334 U. S. 843, and in the dissenting opinion of Circuit Judge Clark in *United States* v. *Josephson,* 165 F. 2d 82, cert. den. 333 U. S. 838.

The statute and resolution, as applied in this case, also violate the prohibition of the due process clause of the Fifth Amendment against statutory vagueness. *Watkins* v. *United States, supra; Thornhill* v. *Alabama,* 310 U. S. 88; *Lanzetta* v. *New Jersey,* 306 U. S. 389; *Connally* v. *General Construction Co.,* 269 U. S. 385.

The statute and resolution, as applied in this case to investigate in the field of education and the teaching profession, violate the Ninth and Tenth Amendments as an attempted Congressional invasion of rights and powers retained by the people and reserved to the people. Cf. *United Public Workers* v. *Mitchell*, 330 U. S. 75, 94.

IV.

The legislative inquiry, and the resulting conviction, were unconstitutional and unlawful because of its unlawful purpose to expose petitioner.

The Committee on Un-American Activities in its Annual Report for 1954, in respect of its investigations in Michigan involved in this case, stated in part (Gov't Ex. 10, p. 15):

> "The 1954 hearings were set up by the committee in order to demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success."

The Committee also noted that it "uncovered" Communist Party members in school systems of Detroit and elsewhere, that "most of the teachers called have been suspended or permanently removed from their positions" and that the Committee "approves of this action."

Thus the Committee officially evaluated its function as exposure of petitioner and other teachers. Moreover, in respect of petitioner, this official evaluation of the Committee's purpose was made specifically applicable by the Subcommittee urging the petitioner at his hearing to "come clean," "clean up" and "get out of that embarrassing situation" (Gov't Ex. 8, p. 5813).

On this record, in the light of *Watkins*, the presumption of legislative regularity is completely destroyed and the

inquiry and conviction of petitioner were illegal because of the attempted improper purpose of exposure.

V.

The inquiry, and the resulting conviction, were unlawful because of the Committee's failure to apprise petitioner of the pertinency of the inquiry.

At no time during petitioner's interrogation by the Subcommittee was the purpose or aim of the investigation for which he had been subpoenaed revealed to him. The statements by Representatives Doyle and Velde referred to by the court below as indicative of the pertinency of the inquiry (App. 31-32) were made after the petitioner's testimony was concluded and not before he was called for examination. These statements patently are too late to cure the defect and cannot be held to have put petitioner on notice of the nature of the inquiry. No other statements relating to the subject matter of the inquiry were made to petitioner.

The record establishes that the petitioner did object to the pertinency of the inquiry. Almost at the outset petitioner declined to answer questions as to his personal political views and opinions and stated:

> "I am a private citizen engaged in the field of education and research and in writing and speaking in connection therewith. I hold no office of public honor or trust. I am not under salary or grant to any governmental department" (Gov't Ex. 8, p. 5807).

Moreover, it was the Subcommittee's duty to reveal its purposes and the Subcommittee's failure cannot be construed as a waiver by the petitioner. A witness has a right to know why an inquiry is being conducted when asked

about his private affairs. *Jones* v. *Securities & Exchange Commission,* 298 U. S. 1, 26. The failure to disclose the subject matter of the investigation made it impossible for the petitioner to determine the pertinency of any of the questions put to him. Consequently the conviction violated petitioner's rights under the Fifth and Sixth Amendments and was not within the statute defining the offense as refusal "to answer any question pertinent to the question under inquiry" (2 U. S. C. 192).

CONCLUSION

For the foregoing reasons it is prayed that the motion for leave to use the original record and the petition for a writ of certiorari be granted.

Respectfully submitted,

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February 14, 1958

APPENDIX A

The constitutional, statutory provisions and rules involved read in relevant part:

CONSTITUTION OF THE UNITED STATES OF AMERICA

* * * * *

Article I, Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

* * * * *

Article II, Section 1. The executive power shall be vested in a President of the United States of America.

* * * * *

Article III, Section 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as Congress may from time to time ordain and establish.

* * * * *

Amendment I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

* * * * *

Amendment 5. No person shall * * * be deprived of life, liberty, or property without due process of law.

Amendment 6. In all criminal prosecutions, the accused shall enjoy the right * * * to be informed of the nature and cause of the accusation; * * *

Amendment 10. The powers not delegated to the United States by the Constitution, nor prohibited by it to the

states, are reserved to the states respectively, or to the people.

2 U. S. C. Section 192, R. S. 102, 52 Stat. 942), as amended:

"Refusal of witness to testify.

"Every person who having been summoned as a witness by the authority of either House or Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month or more than twelve months."

Public Law 601, Section 121, 79th Congress, 2d Session (60 Stat. 828) and House Resolution 5 of the 83rd Congress:

"(b) Rule XI of the Rules of the House of Representatives is amended to read as follows:

"RULE XI

"*Power and Duties of Committees*

"(1) All proposed legislation, messages, petitions, memorials, and other matters related to the subjects listed under the standing committees named below shall be referred to such committees, respectively . . .

"(q)(1) Committee on Un-American Activities.

"(A) Un-American Activities.

"(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

Rule 7(c) of the Federal Rules of Criminal Procedure provides in relevant part:

"Rule 7. The indictment and the Information

(c) NATURE AND CONTENTS. The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. * * *"

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,327

LLOYD BARENBLATT,

Appellant,

—v.—

UNITED STATES OF AMERICA,

Appellee.

On reargument of appeal from the United States District Court for the District of Columbia pursuant to remand by the Supreme Court of the United States.

Decided January 16, 1958

Mr. David Scribner, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of Court, with whom *Mr. David Rein* was on the brief, for appellant.

Mr. William Hitz, Assistant United States Attorney, with whom *Messrs. Oliver Gasch*, United States Attorney, *Lewis Carroll, John D. Lane* and *Harold D. Rhynedance, Jr.*, Assistant United States Attorneys, were on the brief, for appellee.

Before EDGERTON, Chief Judge, and PRETTYMAN, WILBUR K. MILLER, BAZELON, FAHY, WASHINGTON, DANAHER, BASTIAN and BURGER, Circuit Judges.

BASTIAN, *Circuit Judge*: On January 3, 1957, this court affirmed the conviction of Barenblatt on the charge of

contempt of Congress.[1] Petition for certiorari was duly filed in the Supreme Court and on June 24, 1957, the following *per curiam* order was entered:[2]

> "The petition for writ of certiorari in this case is granted. The judgment of the Court of Appeals for the District of Columbia Circuit is vacated and the case is remanded for consideration in light of *Watkins* v. *United States*, 354 U. S. 178."

The present opinion is written in obedience to the above order.[3]

The facts concerning this case are sufficiently stated in the opinion of this court dated January 3 and need not be repeated here. Also, we limit ourselves to the directions of the Supreme Court and consider only the impact of *Watkins* on the instant case, except that we have also weighed the applicability of *Sweezy* v. *New Hampshire*, *infra*.

The Supreme Court in *Watkins* held that the witness there was not accorded a fair opportunity to determine whether he was within his rights in refusing to answer the questions involved and therefore his conviction was invalid under the Due Process Clause of the Fifth Amendment; and that no clear understanding of the question under inquiry could be gathered from the resolution setting up the Standing Committee on Un-American Activities, from the action of that Committee in authorizing the creation of the Subcommittee before which Watkins

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[1] 100 U. S. App. D. C. 13, 240 F. 2d 875 (1957).

[2] 354 U. S. 930 (1957).

[3] Although *Barenblatt* v. *United States*, *supra* note 1, was heard in this court before a division of three judges, we *sua sponte* determined to hear the case on remand *en banc*.

appeared, from the statement of the chairman at the opening of the hearings at which Watkins appeared, or from the statement of the chairman in response to Watkins' protest.

At the hearing before us on remand two points are mainly relied upon by appellant: First, it is claimed that the opinion of the Supreme Court in *Watkins* struck down the resolution creating the Standing Committee on Un-American Activities (hereinafter referred to as the Committee), and that prosecution based on refusal to answer questions asked by the Committee or a Subcommittee questioning thereunder must necessarily fall in that the resolution on which the indictment is based fails to meet the requirements of due process; and second, assuming this was not the case, that part of the opinion in *Watkins* relating to pertinency is dispositive of the present case.

As to the first point, such infirmity of the resolution as may be said to exist does not affect the indictment and, in any event, is a matter of affirmative defense. It is quite true that the Supreme Court in no uncertain terms criticised the resolution creating the Committee for lack of specificity, for uncertainty, for vagueness, and the scope of the construction accorded to the resolution as acted upon by the members of the Committee and its Subcommittees. It would serve no useful purpose to review in detail all the criticisms directed by the Supreme Court to the resolution and the construction placed thereon by the Committee and its Subcommittees as they were constituted over the fifteen years of their existence; but in the margin are contained certain of the comments thereon by the Supreme Court.[4]

[4] "It would be difficult to imagine a less explicit authorizing resolution." 354 U. S. 178, at 202.

Against the background of its views so voiced, the Court considered, in terms presently relevant, the relationship of congressional investigating committees and the witnesses who appear before them. The opinion in *Watkins* clearly describes five criteria by which the pertinence of a question can be made clear to a witness (354 U. S. 178,

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"• • • An excessively broad charter, like that of the House Un-American Activities Committee, places the courts in an untenable position if they are to strike a balance between the public need for a particular interrogation and the right of citizens to carry on their affairs free from unnecessary governmental interference. It is impossible in such a situation to ascertain whether any legislative purpose justified the disclosures sought and, if so, the importance of that information to the Congress in furtherance of its legislative function. The reason no court can make this critical judgment is that the House of Representatives itself has never made it. Only the legislative assembly initiating an investigation can assay the relative necessity of specific disclosures." *Id.* at 205-206.

But the Court added:

"• • • Applied to persons prosecuted under §192 [2 U. S. C.], this raises a special problem in that the statute defines the crime as refusal to answer 'any question pertinent to the question under inquiry.' Part of the standard of criminality, therefore, is the pertinency of the questions propounded to the witness." *Id.* at 208. "• • • It is obvious that a person compelled to make this choice is entitled to have knowledge of the subject to which the interrogation is deemed pertinent. That knowledge must be available with the same degree of explicitness and clarity that the Due Process Clause requires in the expression of any element of a criminal offense. The 'vice of vagueness' must be avoided here as in all other crimes. *There are several sources that can outline the 'question under inquiry' in such a way that the rules against vagueness are satisfied. The authorizing resolution, the remarks of the chairman or members of the committee, or even the nature of the proceedings themselves, might sometimes make the topic clear.* This case demonstrates, however, that *these sources* often leave the matter in grave doubt." *Id.* at 208-209. (Emphasis added.)

This indicates to us that it is possible for the Committee itself or the nature of the proceedings themselves "to make the topic clear," i.e., so to outline the question under inquiry as to satisfy the rules against vagueness. The Court found that Watkins had no such guide.

209, 211, 212, 213, 214): (1) the authorizing resolution, (2) opening remarks of the chairman, members, or counsel of the Committee, (3) the nature of the proceedings, (4) the questions themselves, and (5) the chairman's response to an objection on pertinency.

There are several reasons which we believe militate against the conclusion urged by appellant in this case that the resolution itself was struck down and that, consequently, the prosecution based on failure to answer questions propounded by the Subcommittee was fatally defective.

In the first place, we believe that if the Court had intended to strike down the resolution, it would have said so in so many words. It would not have left so vital an issue to inference or interpretation. The far-reaching result of such a holding would be that the Committee, established by action of the entire House of Representatives, would be rendered helpless and would not even be able to summon a witness, much less have him testify. Nothing less would be an immediate consequence. Certainly nowhere in the *Watkins* opinion does the Court use language essential to effectuate the result contended for by appellant and, on remand, there is no such direction to us to strike down the resolution or to hold invalid the indictment brought for failure to answer questions pertinent to the subject under inquiry. In the absence of a clear expression from the Court we do not take this position.

In the second place, had the Supreme Court struck down the resolution creating the Committee the matter would have been ended, without the further, extended discussion found in *Watkins*. We cannot assume the rest of the opinion to be, nor do we read it as, mere dictum. On the contrary, it is clear the Court was familiar with

the present case as it is specifically referred to in note 34 of the opinion in *Watkins*. The Court certainly knew, therefore, that Barenblatt's conviction grew out of testimony taken under the same resolution. Moreover, it is reasonable to assume that, had the resolution under which both Watkins and Barenblatt were questioned been stricken in its entirety, this case would have been *reversed* on authority of *Watkins* rather than *remanded* for consideration "in light of" that opinion. We read *Watkins* as demonstrating the necessity of more than ordinary caution in upholding First Amendment rights of individuals who are summoned before committees or subcommittees which operate under resolutions infected with the vagueness criticized in *Watkins*.

We do believe that the Supreme Court was of the opinion that the vagueness of the resolution made it necessary, and only fair, that the witness be apprised of the particular matter under inquiry by the Committee or Subcommittee holding the hearings, and, on objection, of the pertinency of the questions involved in the inquiry.

Thirdly, the Supreme Court cited in *Watkins* a number of cases, both in that Court and in Courts of Appeals, bearing on convictions sustained under the same resolution.[5] There is no suggestion that those decisions were repudiated or that their reasoning was erroneous. One finds no intimation that the cases should have been decided by the simple process of voiding the resolution establishing the Committee. We are of clear opinion that

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[5] See, among others, *Quinn* v. *United States*, 349 U. S. 155 (1955); *United States* v. *Bryan*, 339 U. S. 323 (1950); *Barsky* v. *United States*, 83 U. S. App. D. C. 127, 167 F. 2d 241, *cert. denied*, 334 U. S. 843 (1948), *rehearing denied*, 339 U. S. 899 (1950); *United States* v. *Josephson*, 165 F. 2d 82 (2d Cir. 1947), *cert. denied*, 333 U. S. 838, *rehearing denied*, 333 U. S. 858, *motion for leave to file second petition for rehearing denied*, 335 U. S. 899 (1948).

Watkins did not void H. Res. 282, 75th Cong., 3d Sess., or H. Res. 5, 79th Cong., 1st Sess.[6]

Apart from our present review in light of *Watkins*, we have reconsidered the case also in light of *Sweezy v. New Hampshire*, 354 U. S. 234 (1957). Appellant argues that there the Court emphasizes by analogy the fallibility of the resolution creating the Committee. Sweezy refused to answer questions in the course of an investigation by the State Attorney General acting under a resolution of the State Legislature relating to subversive activities. The Supreme Court there held that the investigation had deprived Sweezy of due process of law under the Fourteenth Amendment, and concluded that the record did not sustain the power of the State of New Hampshire to compel the disclosures that the witness refused to make. At the outset of the hearing, Sweezy had raised the question of pertinency as well as the question of violation of First Amendment rights. The Court further pointed out that there was no assurance that the legislature wanted answers to certain questions asked by the Attorney General, to whom the legislature had delegated the duty of making the investigation.

We think that *Sweezy* does not compel us to hold, under the circumstances of the instant case, that any of the appellant's constitutional rights were violated.

In the *Watkins* case, having held that the resolution was not sufficiently specific, standing alone, to advise the witness of the question under inquiry, or at least having expressed doubt, the Supreme Court considered whether the statement of the chairman of the Subcommittee was sufficient to apprise Watkins of the matter under inquiry and whether, when Watkins objected to the questions on

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[6] *Watkins*, notes 35, 36.

the ground of pertinency, the chairman's response was adequate to convey sufficient information on this point. The Court observed that that statement was nothing more than a paraphrase of the resolution itself and gave Watkins insufficient information concerning the subject under inquiry. The investigation there was in connection with communist infiltration in labor and the Court found that a majority of the witnesses were not connected with labor at all, and that seven of the thirty persons whose names were propounded to Watkins had no such connections. The Court wrote that the "inference becomes strong that the subject before the Subcommittee was not defined in terms of communism in labor," and concluded that the question under inquiry was not adequately revealed to Watkins when he had to decide, at his peril, whether or not to answer. The Court declared that "fundamental fairness demands that no witness be compelled to make such a determination with so little guidance."

The Watkins situation is a far cry from that of Barenblatt. The record here discloses that at the opening of the hearings before the Subcommittee on February 25, 1953, the chairman made a statement of the purpose of the inquiry, the concluding part of which reads as follows:

> "*[T]he objective of this investigation is to ascertain the character, extent and objects of Communist Party activities when such activities are carried on by members of the teaching profession who are subject to the directives and discipline of the Communist Party.*"[7] (Emphasis added.)

Comparison of this statement with the initial statement of the chairman discussed in the *Watkins* case, found by

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[7] The entire statement is quoted as an appendix to the opinion of this court dated January 3, 1957.

the Court to be insufficient, suggests a like infirmity. So regarded, we put aside the chairman's statement as a factor even though the fact that Barenblatt had prepared his statement as to his objections to the jurisdiction of the Committee (*infra*, pp. 10, *et seq.*) indicates that he quite well knew the nature of the hearing.

We examine the record then from other approaches. It appears that Barenblatt was summoned to appear before the Subcommittee at 10:30 A. M. on June 28, 1954, and that the session was called to order at 10:37 A. M. It may be presumed that Barenblatt was then present since there is no suggestion that he failed to obey the subpoena. At no time during the present hearing, or in the District Court, was it claimed that Barenblatt was not present when committee counsel, that day, made his statement as to the purpose of the hearing. As a matter of fact, it is not denied even at this time that Barenblatt was then present. In addition also is the fact that Barenblatt testified that he had heard the testimony of Crowley, the first witness called.

Included in the statement of committee counsel at the June 28, 1954, hearing was the following:

> "The field covered will be in the main communism in education and the experiences and background in the party by Francis X. T. Crowley. It will deal with activities in Michigan, Boston, and in some small degree, New York."[8]

The question under inquiry was clearly indicated to the witnesses that day. From what we have said, as well as from what follows in his own testimony, it may fairly be inferred that Barenblatt was present and received the same information.

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[8] 240 F. 2d at 881, note 8.

The next standard discussed by the Supreme Court is the nature of the proceedings. Barenblatt testified the same day as did Crowley, who identified him (Barenblatt) as a member of the Haldane Club of the Communist Party at the University of Michigan. Some of the other witnesses who testified were members of the Communist Party and others, including Barenblatt, were charged with being members of the Communist Party while at the University of Michigan several years before the hearings. All questions related to communist activity at the university, and it is clear that Barenblatt had knowledge that this was the subject matter being inquired into. We are of opinion that the nature of the proceedings, which Barenblatt personally observed, clearly indicated to him the question under inquiry.

The next standard discussed by the Supreme Court was the nature of the questions as put.[9] Here, Barenblatt was asked specifically about his membership in the Haldane Club of the Communist Party while he attended the University of Michigan and was a student of the University of Michigan Council of Arts, Sciences, and Professions. These questions, and the balance of the questions forming the basis of the indictment, viewed in the light of what the committee counsel had said and Crowley's preceding testimony, all in Barenblatt's presence, made indubitably clear to Barenblatt the nature of the subject under inquiry to which the questions were directed.

The record of the hearing, at which Barenblatt appeared and during which the questions in controversy were asked, is devoid of any objection interposed on the ground of

[9] The Supreme Court in *Watkins* said (p. 213): "The most serious doubts as to the Subcommittee's 'question under inquiry,' however, stem from the precise questions that petitioner has been charged with refusing to answer. Under the terms of the statute, after all, it is these which must be proved pertinent."

pertinency. Indeed, every indication is that he came prepared to refuse to answer any questions of moment—pertinent or not. He appeared before the Subcommittee accompanied by counsel and armed with an eleven-page prepared, written statement entitled "Objections to Jurisdiction of the Committee on Un-American Activities and to Questions Propounded by It," objecting "not only to the jurisdiction of the committee, but also to the questions propounded by it. This objection [the statement continues] is made upon advice of counsel as to my rights as provided for in rule VII of the rules of procedure of this committee. Counsel who appear for me are Philip Wittenberg and Irving Like of 70 West 40th Street, Borough of Manhattan, New York City."

The statement can best be described as a lengthy legal brief attacking the jurisdiction of the committee to ask appellant any questions or to conduct any inquiry at all, based on the First, Ninth and Tenth Amendments, the prohibition against bills of attainder, and the doctrine of separation of powers. This brief cited more than twenty Supreme Court decisions, some of which do not concern the congressional power of investigation; and, in several instances, dissenting opinions were cited. Included in this statement are the following:

> "1. I, Lloyd Barenblatt, having been subpenaed before the Committee on Un-American Activities, by subpena dated the 28th day of May 1954, returnable on the 28th day of June 1954, hereby respectfully object to the power and jurisdiction of this committee to inquire into—
>
> (a) My political beliefs;
>
> (b) My religious beliefs;
>
> (c) Any other personal and private affairs;

(d) My associational activities.

"2. I am a private citizen engaged in work in the fields of education and research, and in writing and speaking in connection therewith. I hold no office of public honor or trust. I am not employed by any governmental department. I am not under salary or grant from any governmental department.

"3. The grounds of my objection are as follows:

"A. Any investigation into my political beliefs, my religious beliefs, any other personal and private affairs, and my associated activities, is an inquiry into personal and private affairs which is beyond the powers of this committee.

* * * * *

"D. Under our Constitution our Government is a government of limited powers, tripartite in form, consisting of the legislative, the judicial, and the executive. This separation is fundamental to the preservation of the rights of the people in order that no one department may, through its power, rise to become a despotic arbiter. This committee, through this investigation into my political, associational, religious, and private affairs trespassed upon the judicial department and has caused a lack of balance of power which constitutes a threat to my liberty as an American citizen and is an unconstitutional usurpation.

* * * * *

"This committee, by compelling me to leave my ordinary pursuits and to attend before it for the purpose of testifying with regard to my political beliefs, my religious beliefs, other personal and private affairs, and my associational activities, is acting

as a judicial indicting and accusatory power. It is intruding into the judicial sphere and is following a practice which closely parallels the practices which resulted in bills of attainder being prohibited by our Constitution (art. I, sec. 10).

* * * * *

"Upon all the grounds aforesaid I object not only to the jurisdiction of this committee, but also to the questions propounded by it. This objection is made upon the advice of counsel as to my rights as provided for in rule VII of the rules of procedure of this committee."

To indicate the length to which the Subcommittee went to indicate to Barenblatt the pertinency of the questions, even though the question of pertinency was not raised by him, we quote from the record of Hearings before the Committee on Un-American Activities, House of Representatives, 83rd Congress, 2d Session, Communist Methods of Infiltration (Education—Part 9, pp. 5813-14):

"Mr. Doyle [Representative Doyle]. Mr. Chairman, I think the record should show that at this time there are pending before the United States Congress several active bills dealing with the question of subversive activities, dealing with the question of the Communist Party, dealing with the question of the responsibility that we have as a congressional committee under Public Law 601.

"I am sure that is the record, and I would like the record of this hearing of this committee to especially show it—

"Mr. Velde [Representative Velde]. Yes, I think—

"Mr. Doyle (continuing). And that this witness and these other witnesses could help us in line with

our Public Law 601 responsibility to have hearings with reference to recommendations for legislation in this area under Public Law 601 in accordance therewith.

"Mr. Velde. I concur with you, Mr. Doyle, and I wish to further state that the record should show that the evidence or information contained in the files of this committee, some of them in the nature of evidence, shows clearly that the witness has information about Communist activities in the United States of America, particularly while he attended the University of Michigan.

"That information which the witness has would be very valuable to this committee and its work.

"It is the opinion of the committee, at least the Chair, that the committee has a constitutional legal right in all ways and forms and means to get the information which has been requested from the witness."

Whenever appellant was asked a question which he refused to answer, he asked permission, or attempted without permission, to read the prepared statement. That statement, which was inserted in the record of the hearing at which Barenblatt testified, in no way indicates that he had any doubt as to the subject under inquiry or as to the pertinency of the questions asked. On the contrary, everything points to Barenblatt's knowledge of the subject and his knowledge of the pertinency of the questions asked. Refusal to answer was based on the broad grounds above set forth. He specifically disclaimed invoking the Fifth Amendment.

Applying the *Watkins* ruling to this case, it will be seen that there is decisive distinction between the two. In the present case the subject of the investigation was stated

to be Communist Party activities within the field of education. There was no attempt made to proceed with the hearing under a mere re-hash of the resolution creating the Committee. Here was far more than "a very general sketch of the past efforts of the Committee," as the Supreme Court said in *Watkins*.

While Watkins testified freely as to his own activities, he simply declined to identify members who he believed had perhaps innocently become members of or were closely connected with the Communist Party and who had subsequently withdrawn therefrom. Barenblatt, however, declined to answer either as to his own activities or the activities in general of the Haldane Club. He was represented by counsel, and presented written objections based generally on the jurisdiction of the Committee. His objections went to questions about his own activities and acts and were on specific grounds. Those objections are sufficiently described in our previous opinion.

We have considered the other questions raised by appellant on remand and which he says are material here in the light of *Watkins*. We think such other matters are sufficiently answered by the original opinion of this court, which by reference, for present purposes, is incorporated herein.

We are of opinion that, under the standards laid down for us by the Supreme Court, Barenblatt was made fully aware of the subject under inquiry and was in a position to judge the pertinency of the questions relating to that subject. We are further of the opinion that the questions were in fact relevant and pertinent to that subject.

In accordance with the direction of the Supreme Court, we have carefully considered *Watkins* and its impact on *Barenblatt*. Taking account of all circumstances as noted,

and believing the cases are distinguishable as indicated, we affirm the judgment of conviction.

Affirmed.

EDGERTON, *Chief Judge*, whom BAZELON, *Circuit Judge*, joins, *dissenting*: A unanimous panel of this court decided that "the opinion of the Supreme Court in Watkins v. United States * * * requires reversal" of the conviction of Singer.[1] Barenblatt, like Singer, was convicted of refusing to answer questions of a subcommittee of the Un-American Activities Committee investigating Communists in the field of education. There is no difference pertinent to *Watkins* between Singer's case and Barenblatt's. I think this court errs in overruling our *Singer* decision.

I understand *Watkins* to hold that the Committee on Un-American Activities had no authority to compel testimony because it had no definite assignment from Congress. The Supreme Court said: "[W]hen First Amendment rights are threatened, the delegation of power to the Committee must be clearly revealed in its charter. [354 U. S. at p. 198] * * * An essential premise in this situation is that the House or Senate shall have instructed the Committee members on what they are to do with the power delegated to them. * * * [T]he responsibility of the Congress * * * to insure that compulsory process is used only in furtherance of a legislative purpose * * * requires that the instructions to an investigating committee spell out that group's jurisdiction and purpose with sufficient particularity. [p. 201] * * * It would be difficult to imagine a less explicit authorizing resolution. [p. 202] * * * Combining the language of the resolution with the construction

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[1] *Singer* v. *United States*, — U. S. App. D. C. —, 247 F. 2d 535; reversing *Singer* v. *United States*, 100 U. S. App. D. C. 260, 244 F. 2d 349, which had affirmed *Singer* v. *United States*, 139 F. Supp. 847 (D. C. D. C.).

it has been given, it is evident that the preliminary control of the Committee exercised by the House of Representatives is slight or non-existent. No one could reasonably deduce from the charter the kind of investigation that the Committee was directed to make. [pp. 203-4] * * * The Committee is allowed, in essence, to define its own authority * * * [This] can lead to ruthless exposure of private lives in order to gather data that is neither desired by the Congress nor useful to it. * * * Protected freedoms should not be placed in danger in the absence of a clear determination by the House or the Senate that a particular inquiry is justified by a specific legislative need. * * * An excessively broad charter, like that of the House Un-American Activities Committee, places the courts in an untenable position * * * [p. 205] It is impossible in such a situation to ascertain whether any legislative purpose justifies the disclosures sought * * * The reason no court can make this critical judgment is that the House of Representatives itself has never made it. * * * Plainly these committees are restricted to the missions delegated to them, *i.e.*, to acquire certain data to be used by the House or the Senate in coping with a problem that falls within its legislative sphere. No witness can be compelled to make disclosures on matters outside that area" [p. 206].

In summary: (1) The "instructions to an investigating committee [must] spell out that group's jurisdiction and purpose with sufficient particularity." (2) "It would be difficult to imagine a less explicit authorizing resolution * * * No one could reasonably deduce from the charter the kind of investigation that the Committee was directed to make." (3) "No witness can be compelled to make disclosures on matters outside that area." Since Congress did not define that area, there can be no proof that the

Committee's questions were within it. It follows that the defendant must be acquitted.

Even if, contrary to my clear understanding of *Watkins*, Congress did "with sufficient particularity" authorize the Committee to investigate something, it by no means follows that Congress authorized the Committee to investigate Communists in the field of education. Four Justices of the Supreme Court recently said: "It is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas, particularly in the academic community. • • • [T]he areas of academic freedom and political expression" are "areas in which government should be extremely reticent to tread." Two other Justices said in the same case: "These pages need not be burdened with proof, based on the testimony of a cloud of impressive witnesses, of the dependence of a free society on free universities. This means the exclusion of governmental intervention in the intellectual life of a university." *Sweezy* v. *New Hampshire*, 354 U. S. 234, 245, 250, 262. The Court there held that Sweezy, a university teacher, could not constitutionally be required to answer certain questions about his political activities and connections. Barenblatt was a university teacher. He was convicted because he would not answer certain questions about his political activities and connections. Though the two cases are not identical and *Sweezy* does not prove that Barenblatt's conviction violates his constitutional rights, it does show that this conviction raises serious constitutional questions. Delegation of power to a congressional committee must be construed narrowly when a narrow construction avoids serious con-

stitutional questions. *United States* v. *Rumely*, 345 U. S. 41. The words of the Committee's charter, "investigations of . . . un-American propaganda activities," need not and therefore should not be interpreted to authorize the Committee to select for investigation political activities and connections of university teachers. We must suppose that if Congress had intended to authorize such an investigation it would have done so explicitly.

We need not consider whether the Committee's questions to Barenblatt were pertinent to an investigation of Communists in the field of education. The force of the Court's decision in *Watkins* that the Committee had no definite assignment, and therefore no authority to compel testimony, is not destroyed by the Court's decision that the questions Watkins refused to answer were not clearly pertinent to the investigation in which the Committee was then engaged. "[W]here there are two grounds, upon either of which an appellate court may rest its decision, and it adopts both, 'the ruling on neither is *obiter*, but each is the judgment of the court and of equal validity with the other.'" *United States* v. *Title Ins. & Tr. Co.*, 265 U. S. 472, 486. And even if the Supreme Court's demonstration that the Committee on Un-American Activities had no authority to compel testimony were *obiter*, this court should defer to it.

Although, on examination, the answer to a question is plain, higher courts commonly require lower courts to make the examination and decide the question in the first instance. The Supreme Court followed the usual practice in this case.

FAHY, *Circuit Judge*, with whom WASHINGTON, *Circuit Judge*, joins, *dissenting:* Reading *Sweezy* in the light of *Rumely* and *Watkins*, I think the Committee could not proceed to investigate the field of education—at least with the use of compulsory process, under the sanction of contempt—without a more specific authorization than it had been given, and that therefore the conviction must be reversed. It is unnecessary here to go into the question whether *Watkins* holds the Committee to be without authority to compel testimony on any subject of inquiry.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,327

LLOYD BARENBLATT,

Appellant,

—v.—

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the District of Columbia

Decided January 3, 1957

Mr. David Scribner, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of court, with whom *Mr. David Rein* was on the brief, for appellant.

Mr. John D. Lane, Assistant United States Attorney, with whom *Messrs. Oliver Gasch*, United States Attorney, *Lewis Carroll* and *William Hitz*, Assistant United States Attorneys, were on the brief, for appellee.

Before WASHINGTON, BASTIAN and BURGER, Circuit Judges.

BASTIAN, *Circuit Judge*: Appellant was tried, convicted and sentenced under 2 U. S. C. §192 (1952)[1] (contempt of

[1] "*Refusal of witness to testify.* Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter

Congress). From this conviction the present appeal was taken.

The factual situation disclosed by the record is as follows: On June 28, 1954, one Francis X. T. Crowley testified before a subcommittee of the Committee on Un-American Activities of the House of Representatives concerning his past membership and activities in the Communist Party, and identified the appellant as a member of the Haldane Club of the Communist Party while appellant was a graduate student and instructor at the University of Michigan. On that same day, appellant appeared before the subcommittee in response to its subpoena, at which time, after certain preliminary inquiries, appellant was asked the questions which he refused to answer. These refusals are the basis for his indictment, which charges that appellant "unlawfully refused to answer" the following questions:

"Count One: Are you now a member of the Communist Party?

"Count Two: Have you ever been a member of the Communist Party?

"Count Three: Now, you have said that you knew Francis Crowley. Did you know Francis Crowley as a member of the Communist Party?

"Count Four: Were you ever a member of the Haldane Club of the Communist Party while at the University of Michigan?

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under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months."

"Count Five: Were you a member while a student of the University of Michigan Council of Arts, Sciences, and Professions?"

The indictment charges that these questions "were pertinent to the question then under inquiry," and that the subcommittee was conducting hearings at the time pursuant to its enabling resolution.[2] This law establishes the Committee on Un-American Activities and vests in it, and its duly constituted subcommittees, the duty:

"* * * to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

At the time of appellant's appearance, the subcommittee was conducting an inquiry into communism in the field of education, and the record reflects that appellant had knowledge of this.

I.

The first ground urged for reversal is that the indictment is fatally defective in that it does not plead a deliberate and intentional or knowing refusal to answer. This specific question was ruled on by this court contrary to appellant's contention in *United States* v. *Deutch*, —— U. S. App. D. C. ——, 235 F. 2d 853 (1956).

[2] Public Law 601, Sec. 121, 79th Cong., 2d Sess. (60 Stat. 828), and H. R. Res. 5, 83d Cong., 1st Sess. (1953).

The argument is also advanced that the indictment is defective in that it does not describe the matter into which the subcommittee was inquiring at the time appellant appeared before it. The indictment alleges an unlawful refusal to answer "questions which were pertinent to the question then under inquiry," which inquiry was made pursuant to the subcommittee's enabling resolution. Thus, it appears that the indictment stated all the elements of the offense charged and served notice on appellant as to what conduct on his part constituted the alleged offense. This satisfies the requirements of Fed. R. Crim. P. 7(c). See *United States* v. *Josephson*, 165 F. 2d 82 (2d Cir. 1947), *cert. denied*, 333 U. S. 838 (1948).

It is also contended that the indictment is fatally defective in that it alleges a refusal to answer questions before a subcommittee of a committee, and that Congress did not intend to make it a crime to refuse to answer questions of a subcommittee. Appellant urges that Congress was fearful of having penal sanctions imposed upon those who refused to answer questions propounded by subcommittees, as Congress considered subcommittees more subject to partisanship and more likely to abuse their powers than full committees. We disagree. Nothing has been shown which reflects that Congress has indicated such belief. We can only construe the statute in the light of the obvious purpose for its enactment. That purpose was to discourage the impairment of the vital investigative function of Congress. *Fields* v. *United States*, 82 U. S. App. D. C. 354, 164 F. 2d 97, *cert. denied*, 332 U. S. 851 (1948). The function Congress sought to protect is as often committed to subcommittees as it is to full committees of Congress, as indeed it must be.

Construing the statute in a manner consistent with its obvious purpose [*Vermilya-Brown Co.* v. *Connell*, 335 U. S.

377 (1948), *United States* v. *Brown*, 333 U. S. 18 (1948), *The Emily and The Caroline*, 22 U. S. (9 Wheat.) 381 (1824)] we hold that Congress intended the word "committee" in its generic sense, which would include subcommittees.

II

Next, appellant contends that the subcommittee failed to consider and overrule his objections to the questions asked him, and that, therefore, there could be no proof beyond a reasonable doubt of a criminal intent to refuse to answer. He insists that to meet this burden the subcommittee must be shown to have considered his objections, to have overruled them, and then to have directed him to answer. In support, appellant cites *Quinn* v. *United States*, 349 U. S. 155 (1950), *Emspak* v. *United States*, 349 U. S. 190 (1950), and *Bart* v. *United States*, 349 U. S. 219 (1950).

The record of the subcommittee hearing for the day appellant appeared was admitted in evidence at the trial.[3] From that record, we are convinced that appellant did communicate his objections to the subcommittee and that he was clearly directed to answer each of the questions. Furthermore, it is entirely clear that appellant had ample opportunity to state any additional objections he may have had.

Appellant came before the subcommittee with an eleven-page written statement, which he characterized as his objections to the questions asked of him. Whenever he was asked a question which he refused to answer, appellant asked permission, or attempted without permission, to read the prepared statement. The Chairman ruled that

[3] Hearings Before the House Committee on Un-American Activities on Communist Methods of Infiltration (Education—Part 9), 83d Cong., 2d Sess. (1954), Gov. Exhibit No. 8.

it was a preliminary statement, which, under the rules of the subcommittee (with which appellant admitted familiarity) had to be filed a reasonable time in advance of appearance before the subcommittee.[4] At one point appellant asserted:

> "I am objecting on these grounds, and I will not answer any questions about which the list of objections is read: my political beliefs; my religious beliefs; any other personal and private affairs; my associational activities.
>
> "I will not answer any of those questions on the grounds of my objections in this statement which I again respectfully request that I be able to read at this point to get into the record the objections so that we can proceed from that point."

This assertion by appellant was made before he was directed to answer the question set forth in the first count of the indictment.

Prior to making the objection referred to above, appellant had stated, in response to a question:

> "Sir, I would like here to state my objections to the power and jurisdiction of this committee to inquire into my political beliefs, my religious beliefs, and any other personal and private affairs * * *"

The Chairman, as stated, had regarded the written statement as a preliminary one and had ruled that it would

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[4] The statement can best be described as a lengthy legal brief attacking the jurisdiction of the committee to ask appellant any questions or to conduct any inquiry at all, based on the First, Ninth and Tenth Amendments, the prohibition against bills of attainder, and the doctrine of separation of powers. This brief cited more than twenty Supreme Court decisions, some of which do not concern the congressional power of investigation; and, in several instances, dissenting opinions were cited.

be taken under advisement as to whether or not it might be inserted into the record. Faced with continued refusal to answer the questions and appellant's repeated attempts to read the lengthy statement, the Chairman waived compliance with the rules of the subcommittee and accepted the statement into the record. Thereafter, when appellant refused to answer a question, he referred to the statement, as the subcommittee suggested that he do, as the basis of his refusal. The record reflects that one member of the subcommittee had read the statement but it does not show that the other members had done so. It is this upon which appellant relies when he argues that the subcommittee failed to consider his objections. With that position we cannot agree.

First, appellant did communicate to the subcommittee the general basis of the objections contained in his written statement. Secondly, one member of the subcommittee, shown by the record to have read the statement, indicated his belief that the statement contained no valid grounds for refusal to answer; and, in admitting the statement into the record, the Chairman indicated that he was relying on that member.

We cannot, within the limited power of a court to review the procedures of a congressional committee, insist that such a committee interrupt its proceedings for detailed examination of a lengthy attack on its power to ask a question or to make any inquiry at all.[5] Certainly the subcommittee had the right to insist that objections be cast in a reasonable form.

Thirdly, to the extent that appellant had an objection which was not actually communicated to the subcommittee,

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[5] Cf. *Eisler* v. *United States*, 83 U. S. App. D. C. 315, 170 F. 2d 273 (1948), *cert. dismissed*, 338 U. S. 883 (1949); *Barsky* v. *United States*, 83 U. S. App. D. C. 127, 167 F. 2d 241 (1948), *cert. denied*, 334 U. S. 843.

he has no one to blame but himself. The record does not disclose that the subcommittee denied appellant a right to object to questions or that it was in any way abusive in its treatment of him. On the contrary, the subcommittee demonstrated not only considerable patience but active interest in determining what appellant's objections were. This was true even to the extent that appellant was asked several times if the grounds for his objections encompassed the Fifth Amendment privilege against self-incrimination, which he stated they did not.

Briefly stated, our conclusions are: that appellant actually apprised the subcommitte of his objections; that the subcommittee found them unacceptable and directed appellant to answer; that the courts cannot require a committee to make a detailed study of what may be fairly described as a lengthy legal brief before it directs a witness to answer; that appellant had numerous opportunities to make known any additional objections he may have had but that he instead insisted upon reading his eleven-page statement; that that statement was read by one member of the subcommittee and found unpersuasive; and that the Chairman, relying on this member's knowledge of the statement, and its purport as communicated by the witness, directed an answer to each question. Therefore, we must hold that appellant's refusals to answer were at his own risk.

Quinn v. *United States, supra,* is not inconsistent with our view; we read that case as buttressing our conclusions. It concerned a witness who, instead of stating the grounds of his objections to questions of a congressional committee, represented his objections as being the same as those interposed by a previous witness, which objections had been vague and ambiguous. The Supreme Court held that, though Quinn had only vaguely asserted an objection based

on the Fifth Amendment, the committee should have overruled his objection and specifically directed him to answer before he could be convicted for contempt of Congress. It is noteworthy that the Supreme Court stated:

> "But the fact that a witness expresses his intention [to object on grounds of the Fifth Amendment] in vague terms is immaterial so long as the claim is sufficiently definite to apprise the committee of his intention. As every one agrees, no ritualistic formula is necessary in order to invoke the privilege." 349 U. S. at 164.

Consistent with *Quinn*, we conclude that appellant did apprise the subcommittee of his objections based on the First Amendment. Certainly there is no doubt here that the subcommittee, when it directed appellant to answer each question, knew that appellant objected. It knew the general bases of the objections and rejected them. It gave him an opportunity to make any objections not communicated. It then directed him to answer each question set forth in the indictment.

III

Appellant next contends that the primary purpose of the subcommittee's inquiry was to "expose" his beliefs and associations and that, therefore, the subcommittee exceeded the bounds of its investigative power. There can be no doubt that Congress has the power of inquiry and investigation when the inquiry or investigation is upon a subject concerning which Congress may legislate. The very resolution establishing the committee indicates that the subject under inquiry was one concerning which Congress could legislate. The fact that such an inquiry or investigation may reveal or "expose" some facts em-

barrassing to some one is incidental and without effect upon the validity of the inquiry.

Evidence was presented at the trial to show that the House Committee on Un-American Activities had been engaged in a continuing investigation into communist methods of infiltration and that one aspect of this investigation dealt with the field of education.[6] The trial court found that it was as a part of this larger and continuing study that appellant was called to testify.

The committee Chairman opened the first hearing on the subject of communist infiltration into the field of education on February 25, 1953, by stating the nature and purpose of the inquiry.[7]

Appellate urges that a statement in the Annual Report of the Committee to the effect that hearings were set up to demonstrate to the people of Michigan the infiltration into the field of education in Michigan "and the identity of those individuals responsible for its success * * *" shows that "exposure," not legislation, was the point and purpose of the hearings. This statement, in context, is part of an extended discussion of the whole activity of this committee and cannot be regarded as a statement of the sole or primary objective and, however, it may conflict with the broader objectives, does not justify reversal of appellant's conviction. Courts must presume congressional investigations to have valid legislative purposes. *Townsend* v. *United States*, 95 F. 2d 352, *cert. denied*, 303 U. S. 664 (1938). Since the statement relied on does not negate the presence of other, and we think legitimate,

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[6] Annual Report of the Committee on Un-American Activities for the Year 1953, H. R. Rep. No. 1192, 83d Cong., 2d Sess. (1954).

[7] For the statement of the Chairman see the appendix hereto.

purposes of the inquiry, the presumption of valid purposes is still operative and unrebutted. A reading of the full report indicates that the primary purposes of the inquiry were in aid of legislative processes.

Examination of the report shows that legislative recommendations were made by the committee " * * * based upon investigations and hearings, in the year, 1954." It is unnecessary for present purposes to comment on those recommendations except to say that they called for significant legislation, and illustrate that the committee did in fact recommend legislation based upon investigations and hearings in 1954, perhaps including the very hearing at which appellant testified. Apparently "exposure," if a purpose of the hearing in question, was not the primary purpose.

The subcommittee was investigating communist infiltration in the field of education, and did so pursuant to its duty to investigate the extent, character, and objects of un-American propaganda activities in the United States, and all other questions related thereto that would aid Congress in its legislative function. Taking this into consideration, together with the statement of the Chairman at the time the inquiry was inaugurated in February 1953, as well as the statement of the committee counsel on the morning appellant appeared to testify,[8] we conclude that the subcommittee's dominant purpose in examining appellant was to acquire information which it regarded as useful in formulating legislative recommendations. This is a more valid appraisal than would result from concen-

[8] Communist Methods of Infiltration (Education—Part 9), note 3 *supra*, at 5754: "The field covered will be in the main communism in education and the experiences and background in the party by Francis X. T. Crowley. It will deal with activities in Michigan, Boston, and in some small degree, New York. Without further ado, Mr. Chairman, if I have your permission I will call the witness."

trating on one isolated statement in the Annual Report. So long as competent evidence establishes a substantial legislative purpose in calling a witness before a congressional committee, and in its examination of him, we will not balance this purpose against other motivations. Once it is proven that the committee felt induced to call a witness in order to acquire information in aid of legislative processes, we think our limited function is exhausted.

We are next asked to decide whether Congress possesses the power to investigate citizens who are engaged in the education systems of the country. Appellant maintains that Congress cannot do this because the field of education has been reserved to the states, and that, under the Tenth Amendment, Congress has no authority to legislate in that sphere.

We must ascertain specifically the subject under inquiry at the time appellant appeared as a witness before the subcommittee. The official report of the Committee on Un-American Activities, which contains the testimony of appellant before the subcommittee, is entitled "Communist Methods of Infiltration (Education—Part 9)." This report indicates that, on the day appellant was heard by the subcommittee, the Chairman asked the committee counsel to state the purposes and reasons for the hearing. Counsel stated, among other things, that Crowley, a formerly recalcitrant witness, had volunteered to come before the subcommittee and that "[t]he field covered will be in the main communism in education and the experiences and background in the party by Francis X. T. Crowley." The same day that the subcommittee heard Crowley, it examined appellant. Thus, we see that the title given the inquiry, "Communist Methods of Infiltration (Education—Part 9," was consistent with the announced subject of the inquiry at the time appellant appeared. Looking fur-

ther, the nature, purpose, and hope of the committee, when it began this general, continuing inquiry in February 1953, can be determined by examining Government Exhibit No. 7.[9] We take these statements of the Chairman as conclusive of the purpose of the inquiry pursuant to which appellant was called as a witness.

The inevitable result is that the purpose and nature of the inquiry was to determine communist methods of infiltration in the field of education. There is no indication of a congressional desire or attempt to examine curricula, content of text books, administration of schools, or criteria for employing and discharging teachers. Indeed, the committee's official report on this investigation negatives any such interpretation of the intent of Congress. There is nothing to suggest that education, as such, was any more involved here than were labor unions and the motion picture industry in earlier inquiries by this same congressional committee. Convictions of witnesses called pursuant to both of these latter investigations have been affirmed in the courts.[10]

While it is true, as appellant points out, that Congress has broader powers to enact legislation in the field of labor than it does in the field of education, it is not true that persons who incidentally happen to be teachers have greater immunity from inquiry into their activities than do labor leaders and screen writers, when those activities relate to matters which are a legitimate concern of the Congress. By virtue of their great profession, teachers owe a higher duty, morally at least, to their country and its citizenry; but their status as teachers does not confer

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[9] See appendix.

[10] See, *e.g.*, *Flaxer* v. *United States*, 235 F. 2d 821 (D. C. Cir. 1956); *Lawson* v. *United States*, 85 U. S. App. D. C. 167, 176 F. 2d 49 (D. C. Cir. 1949), *cert. denied*, 339 U. S. 972 (1950).

upon them a right not to have their separate or collateral activities inquired into when the same activities by others may be.

Shortly before appellant appeared before the subcommittee, its parent body had recommended to the Congress, and Congress had enacted, the Veterans' Readjustment Assistance Act of 1952, 66 Stat. 667,[11] which provides that educational stipends shall not be paid to veterans in attendance at educational institutions listed by the Attorney General as totalitarian, fascist, communist or subversive. This is significant in that it demonstrates a valid legislative interest in the incidence of communist infiltration into educational institutions and the number, location and identity of communists in the schools, in order that Congress might be informed of a deed to extend or repeal the Act.

American colleges and universities are holders of contracts with the Government to conduct a variety of research projects of far-reaching consequence to the national security. They are frequently petitioners for and recipients of substantial grants not directly related to national security but involving expenditures of tax revenues. Thus, there are various other valid reasons for a congressional committee to launch an investigation of the type being conducted when appellant appeared as a witness. Congress has the recognized authority to conduct inquiries to determine if projects crucial to national defense, and paid for from public funds, are being carried forward with dispatch and in a manner consonant with safeguarding those projects from those whom Congress might regard as subversive or potential enemies. Therefore, it is important for Congress to know the methods, nature and extent of communist infiltration of colleges and

[11] 38 U. S. C. §933

universities which are or might become engaged in secret defense projects.

IV

Appellant's final contention is that the resolution establishing the Committee on Un-American Activities and conferring on it jurisdiction to make investigations is, on its face, contrary to the First and Fifth Amendments to the Constitution of the United States. This very contention has been urged upon this and other courts and has been consistently rejected.[12]

It is urged that a committee of Congress has no constitutional authority to require an answer of a witness as to his political beliefs and associations. In *Quinn* v. *United States*, 349 U. S. at 160-161, the Supreme Court said:

> "There can be no doubt as to the power of Congress, by itself or through its committees, to investigate matters and conditions relating to contemplated legislation. This power, deeply rooted in American and English institutions, is indeed co-extensive with the power to legislate. Without the power to investigate—including of course the authority to compel testimony, either through its own processes or through judicial trial—Congress could be seriously handicapped in its efforts to exercise its constitutional function wisely and effectively.
>
> "But the power to investigate, broad as it may be, is also subject to recognized limitations. It cannot

[12] *Marshall* v. *United States*, 85 U. S. App. D. C. 184, 176 F. 2d 473 (D. C. Cir. 1949), *cert. denied*, 339 U. S. 933 (1950); *Dennis* v. *United States*, 84 U. S. App. D. C. 31, 171 F. 2d 986 (D. C. Cir. 1949), *aff'd*, 339 U. S. 162 (1950); *United States* v. *Josephson*, 165 F. 2d 82 (2d Cir. 1947), *cert. denied*, 333 U. S. 838 (1948)); and cases cited notes 5 and 10 *supra*.

be used to inquire into private affairs *unrelated to a valid legislative purpose.* * * *" [Italics supplied.]

From this, it appears that if there is a valid legislative purpose, then, as was held in *Barsky*,[13] Congress can inquire into "private affairs" and, of course, political views and associations. If Congress can legislate against a threat of communism which is reasonably apprehended, it can, consistently with the meaning of the Constitution and the language in the *Quinn* case quoted above, inquire of a witness whether or not he is a communist, subject to the constitutional limitations imposed by the privilege against self-incrimination.

We said in *Barsky*:

"* * * We think that inquiry into threats to the existing form of government by extra-constitutional processes of change is a power of Congress under its prime obligation to protect, for the people that machinery of which it is a part, and inquiry into the desirability vel non of other forms of government is a power of Congress under its mandate to initiate amendments if such become advisable.

"* * *

"If Congress has power to inquire into the subjects of Communism and the Communist Party, it has power to identify the individuals who believe in Communism and those who belong to the party. The nature and scope of the program and activities depend in large measure upon the character and number of their adherents. Personnel is part of the subject. * * *" 167 F. 2d at 246.

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[13] *Barsky* v. *United States*, note 5 *supra*.

Appellant asks that we re-evaluate *Barsky* bearing in mind that the subcommittee record indicates that appellant's participation, if any, in communist groups was confined to the intellectual and idealogical realm and was not conspiratorial in nature. We reaffirm *Barsky*, and see nothing which places appellant beyond the ruling therein.

If the Haldane Club of the Communist Party, to which appellant allegedly belonged, was in fact principally a Marxist study group and, as believed by the subcommittee, an adjunct of the Communist Party, we cannot say that the identity of its members and the extent and nature of their participation were not matters of legitimate concern to the subcommittee under its enabling resolution. Whether the Communist Party embraces not only conspiratorial groups but intellectual discussion groups as well, the relationship between them, the group most prevalent, and the extent to which an individual might participate in the activities of each, whether such groups operate within or are connected with public educational institutions, place the questions asked appellant clearly within the pale of valid inquiry.

Though we, of course, agree that Congress does not have a general power to inquire into political beliefs and associations, it does have that power where the answer to the question posed can be and is regarded by Congress as having value in the exercise of legislative duty. Congress can legislate on the internal security dangers it has declared to have arisen from the activities of the Communist Party in this country. It can and it has.

Our view of the record convinces us that the indictment was in no respect defective; that appellant either communicated or could have communicated all his objections to questions asked him and that the committee indicated his objections were untenable; that, if the committee

was motivated in part by a purpose of exposure in calling appellant as a witness, it was also properly motivated by a desire for information which it reasonably believed would be helpful to it in the discharge of its duty to make legislative recommendations; and that the subject matter under investigation was not beyond the scope of permissible congressional inquiry under the committee's enabling resolution; which resolution is within its constitutional powers.

The conclusion dictated is that the judgment appealed from is correct and is therefore

affirmed.

APPENDIX

Hearings Before the House Committee on Un-American Activities, Communist Methods of Infiltration (Education), 83d Cong., 1st Sess. (1953), pp. 1-3.

Opening Statement of the Chairman, February 25, 1953

"Mr. Davis [the first witness called], it is our understanding that you are a member of the teaching profession. In opening this hearing, it is well to make clear to you and others just what the nature of this investigation is.

"From time to time, the committee has investigated Communists and Communist activities within the entertainment, newspaper, and labor fields, and also within the professions and the Government. In no instance has the work of the committee taken on the character of an investigation of entertainment organizations, newspapers, labor unions, the professions, or the Government, as such; and it is not now the purpose of this committee to investigate education or educational institutions, as such. The committee will follow its long-established policy of investigating Communists and Communist activities wherever it has substantial evidence of its existence.

"When investigating Communists and Communist activities within certain labor unions, the committee was met with the charge by alarmists and partisans within that field that the committee was a group of Fascists and the enemy of labor, and that the real purpose of the investigation was to destroy labor unions. Similar and equally unfounded charges have been made with regard to this hearing. In pursuing its work within the field of labor, the committee carefully refrained from taking any part in any internal disputes within labor or any disputes between employers and employees and confined its activities to the ascertainment and identification of leaders in the labor unions who were members of the Communist Party and were using their influence to promote the objectives of the Communist Party within the field of labor, and to the character, extent, and objects of their Communist Party activities. The work of the committee in this respect has met with such growing success that many labor unions are now actively engaged in eliminating from positions of influence union officials known to be members of the Communist Party and engaged in Communist activities.

"The purpose of the committee in investigating Communists and Communist activities within the field of education is no greater and no less than its purpose in investigating Communists and Communist activities within the field of labor or any other field.

"The committee is charged by the Congress with the responsibility of investigating the extent, character, and objects of un-American propaganda activities in the United States, the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution and all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

"It has been fully established in testimony before congressional committees and before the courts of our land that the Communist Party of the United States is part of an international conspiracy which is being used as a tool or weapon by a foreign power to promote its own foreign policy and which has for its object the overthrow of the governments of all non-Communist countries, resorting to the use of force and violence, if necessary. This organization cannot live except by the promulgation and diffusion of subversive and un-American propaganda and in the view of this committee every person who remains a member of it is contributing to the ultimate accomplishment of its objectives. Communism and Communist activities cannot be investigated in a vacuum. The investigation must, of necessity, relate to individuals and, therefore, this morning the committee is calling you as a person known by this committee to have been at one time a member of the Communist Party.

"The question is sometimes asked whether it is necessary to call as witnesses those who are no longer members of the Communist Party. It is quite obvious for a number of reasons that the answer should be 'Yes.' Such witnesses add immeasurably to the sum total of the knowledge of the character, extent, and objects of Communist activities. The testimony of former Communist Party members resulted virtually in immobilizing the Communist Party in Hollywood. These witnesses considered it their patriotic duty to answer under oath questions relating to their knowledge of Communist infiltration into the organizations of which they had been members, and to their knowledge of other Communist Party activities. Witnesses from the Screen Writers' Guild, the directors' guilds, labor unions, the legal profession, the medical profession, and other groups have made a great contribution to the defense

of their country by disclosing to this committee facts within their knowledge.

"Former Communist Party membership, in the view of the committee, should not be held against an individual whose testimony admitting former Communist Party membership has that character of truthworthiness which convinces one that he has completely and finally terminated his Communist Party membership and has been given in all good faith. It is of great aid in determining who remain in the Communist Party to ascertain who have left it.

"The committee was greatly concerned with the evidence developed in the Hollywood hearings with respect to the type of 'thought control' practiced by the Communist Party upon its members. Screen writers were told how and what they should write. The testimony of Budd Schulberg and Edward Dmytryk demonstrate the point as clearly as laboratory experiments would prove a chemical reaction. The same influence was found to exist in the field of art and music. An objective study of this testimony will lead to the inescapable conclusion that it is the Communist Party which is the enemy of academic freedom.

"The committee is equally concerned with the opportunities that the Communist Party has to wield its influence upon members of the teaching profession and students through Communists who are members of the teaching profession. Therefore, *the objective of this investigation is to ascertain the character, extent and objects of Communist Party activities when such activities are carried on by members of the teaching profession who are subject to the directives and discipline of the Communist Party.*" [Emphasis supplied.]

ORAL OPINION OF THE DISTRICT COURT

This defendant is on trial before the Court on a charge of contempt of Congress, in that he declined to answer certain questions as a witness before a subcommittee of the House Committee on Un-American Activities. The questions are as follows:

> "Are you now a member of the Communist Party?"
>
> "Did you know Francis Crowley as a member of the Communist Party?"
>
> "Were you ever a member of the Haldane Club of the Communist Party while at the University of Michigan?"
>
> "Were you a member while a student of the University of Michigan Council of Arts, Sciences, and Professions?"

The evidence shows that these questions were asked, that the defendant deliberately and intentionally refused to answer; that he was then directed to answer the questions by the chairman of the subcommittee, and that he persisted in his refusal.

Some of the questions of law here raised were also raised in the case of *United States* against *Harry Sacher*, which was tried a few days ago, and I refer to my remarks at the conclusion of that trial for the disposition of those questions. Two or three additional points are raised here that were not involved in the *Sacher* case. The first is the question of pertinency of the questions addressed to the witness.

The House Committee on Un-American Activities is authorized by Rule 17(b), either as a whole or by subcommittee, to make investigations of the extent, character, and objects of un-American propaganda activities in the United States; the diffusion within the United States of subver-

sive and un-American propaganda; and all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The authority of the House Committee on Un-American Activities to inquire of witnesses as to whether they were members of the Communist Party has been established and reiterated time and time again by the Court of Appeals and by the Supreme Court. *Lawson* versus *United States*, 179 Federal (2d) 49, and *Emspak* versus *United States*, 203 Federal (2d) 54, are some of the authorities so holding. The questions are therefore pertinent on their face. But even beyond that certain documents were introduced in behalf of the Government to show the specific basis for the particular inquiries of the defendant, namely, that the committee was investigating alleged infiltration of the Communist movement into educational institutions, and the witness was being interrogated concerning those matters; he being a member of the educational profession. The evidence further shows that the testimony elicited by the committee was actually being used by the committee in connection with legislative recommendations.

The next point that is raised is that the hearing, although it started as a hearing before the full committee, was transferred into a hearing before a subcommittee. There is no variance between the proof and the indictment, because the indictment alleges that the hearing was being conducted by a subcommittee. The rules expressly authorize the committee to act through a subcommittee, and in the absence of any rule as to how a subcommittee should be appointed, it would necessarily follow that the chairman of a committee would have the right to appoint subcommittees. Moreover, the Court is impressed by the opinion of Chief Justice Vinson in *United States* versus *Bryan*, 339 U. S. 323, to the effect that technical questions

and objections relating to the jurisdiction or composition of a committee or subcommittee must be raised at the hearing instead of later on in the trial, on a charge of contempt.

As the courts have held time and time again, while the contempt must be willful, it does not mean that there must be proof of bad faith or dishonest motives. Even if a witness acts in good faith, that is not a defense and does not negative wilifulness. Willfulness consists in an intentional, deliberate refusal, rather than an inadvertent or accidental refusal, or a refusal that was unintentional or based on a misunderstanding.

In the light of all the evidence, the Court finds the defendant guilty on all counts.